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Chairman: Mr. LEHMANN (Denmark)

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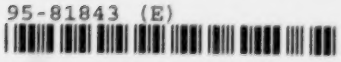

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The meeting was called to order at 3.15 p.m.

AGENDA ITEM 141: REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SEVENTH SESSION (continued) (A/50/10 and A/50/402)

1. Ms. BOUM (Cameroon) said that little progress had been made on the topic of State responsibility since the Commission had first taken it up in 1955. It was therefore gratifying that the Commission had decided to complete the first reading of the draft articles on that topic at its next session, in 1996.

2. Her delegation regretted the inclusion in the draft articles of provisions on countermeasures. Although the Commission had tried in articles 13 and 14 to regulate the use of countermeasures, her delegation feared that the use of countermeasures would give rise to many abuses and would be subject to varying interpretations.

3. Her delegation supported draft articles 1 to 7 of part three and the annex thereto in so far as the general system for the settlement of disputes respected the sacrosanct principle of free choice of means laid down in Article 33 of the Charter and the special system aimed to correct the defects inherent in the regime of countermeasures.

4. As expected, the seventh report of the Special Rapporteur had given rise to controversy because the proposals contained in it derived directly from decisions taken by the Commission at the time of the adoption of article 19 of part one of the draft articles. Her delegation supported the approach taken by the Special Rapporteur and endorsed by the majority of the members of the Commission of continuing work on the draft articles of part two, taking into account the decisions taken at the time of the adoption of the draft articles of part one. Any reassessment of specific questions raised by the draft articles as a whole would be carried out in second reading on the basis of the comments and observations of States.

5. Mr. BAXTER (Australia) said that the topic of the law and practice relating to reservations to treaties was one of the most difficult and controversial areas of international law. Part of the difficulty stemmed from certain deficiencies in the rules relating to reservations set down in the Vienna Convention on the Law of Treaties and drawn upon in the Vienna Convention on the Succession of States in respect of Treaties and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. His delegation encouraged the Commission to focus on finding practical solutions to some of the problems that had been identified and commended the Commission's position that there should be no change in the relevant provisions of the three Vienna Conventions. Any modification of those Conventions was likely to lead to further uncertainty about the rules relating to reservations, as different regimes would then apply between different parties to the same treaties, depending upon whether they had ratified the new rules or not. Such an outcome needed to be avoided.

6. His delegation also supported the Commission's conclusion that it should try to adopt a guide to practice in respect of reservations, which would take

the form of draft articles with commentaries. The preparation of model clauses for particular types of treaties would assist States and international organizations in the negotiation of new treaties and help to harmonize international practice. If it later became apparent that a separate legal instrument would be viable, the guidelines could be transformed into a convention or protocols.

7. Under the traditional unanimity rule, a reservation was not effective unless it was accepted by all the other parties to the treaty in question. The more flexible approach adopted in the Vienna Conventions followed on from the advisory opinion rendered by the International Court of Justice on the Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide. However, that approach appeared to put a State making a reservation in a very favourable position. Since an objection to a reservation excluding the operation of a particular rule did not have the effect of restoring the rule as between the reserving State and the objector, the objection was quite ineffective legally. An objection to a reservation which modified the effects of a rule prevented the reserving State from asserting that its interpretation of the rule had been accepted but did not mean that the objecting State would be able to demonstrate that the rule applied between the two States as if the reservation had not been made.

8. The Commission might wish to consider whether the principle of reasonableness could be included in the guide to practice in respect of reservations. That principle could be used to interpret Vienna Convention rules that might otherwise have arbitrary and unsatisfactory consequences for States reacting to reservations.

9. Another omission from the Vienna Convention rules was a clear guide as to the consequences of a State's failure to comply with article 19 in formulating a reservation. It was not clear whether a State which made a reservation that was prohibited by article 19 was bound to accept a treaty without reservation, or how it would be determined that a reservation contravened article 19. The Commission's study of the "permissibility" and "opposability" schools of thought might provide guidance on those questions.

10. His delegation supported the Special Rapporteur's intention to look specifically at human rights instruments. The question of reservations to human rights treaties was controversial, and it was worth considering whether special principles should apply to the making and interpretation of reservations in relation to rules which protected fundamental human rights.

11. Turning to chapter VII of the Commission's report, which dealt with the Commission's programme of work, his delegation endorsed the proposed timing for the consideration of the topic on reservations to treaties and the recommendation to include the topic of diplomatic protection in the agenda. It supported the proposal to undertake a feasibility study on a topic concerning the law of the environment, since an integrated approach to preventing further deterioration of the global environment might be necessary. However, the Commission should first complete its first reading of the draft articles on State responsibility and second reading of the draft Code of Crimes against the Peace and Security of Mankind.

12. Mr. ROBINSON (Jamaica), referring to the topic of the law and practice relating to reservations to treaties, said that treaties had a great impact on the maintenance of international peace, stability and security. There must therefore be a reasonable guarantee of the integrity and certainty of all aspects of the legal regime of treaties.

13. Universal or near universal participation in multilateral treaties was obviously an objective that was in the best interests of the global community. The technique of reservations facilitated wider participation in such treaties. The fundamental issue raised by reservations was that of balancing the rights and obligations of the reserving State with those of other States parties to a treaty in order to maintain the treaty's integrity. A flexible and pragmatic approach was therefore required.

14. Articles 19 and 20 of the Vienna Convention on the Law of Treaties had a sequential relationship in that article 19 set out the circumstances in which a State could formulate a reservation while article 20 specified the conditions for the acceptance of or objection to a reservation that met the requirements for formulation in article 19. The wording of article 20 suggested that it was the contracting States that would determine whether the requirements of article 19 had been met. Of the three criteria in article 19, compliance with those in paragraphs (a) and (b) could be determined with some certainty, but the question of whether a reservation was incompatible with the object or purpose of the treaty (paragraph (c)) was notoriously difficult.

15. Both the "permissibility" and "opposability" schools neglected the integral, sequential relationship between articles 19 and 20 which together, set the conditions for the validity of a reservation. The question of the implementation of a reservation did not arise until the requirements for formulation in article 19 had been met. However, a reservation which met those requirements was not inherently valid in the sense that it could be implemented, since its validity was ultimately tied to the system of acceptance of and objection to reservations provided for in article 20. He agreed with the permissibility school that an objection could be made only to a permissible reservation, if that meant a reservation that had met the requirements of article 19, but disagreed that there was a unilateral right to determine whether the article 19 requirements had been met, since a reservation that one State held to be plainly incompatible with the object and purpose of a treaty might not be viewed in the same way by another State.

16. It was clear from articles 76 and 77 of the Vienna Convention on the Law of Treaties that, in the absence of any express provision in the treaty or any developed practice, the depositary of a treaty did not have the competence to settle disputes as to whether the requirements of article 19 had been met. The depositary's function was to transmit the reservation to the other States parties without passing judgement on it. In the absence of mechanisms in treaties to resolve disputes between parties as to the validity of reservations, monitoring bodies such as the Human Rights Committee would arrogate to themselves the right to pass judgement on reservations to treaties. His delegation therefore welcomed the identification by the Special Rapporteur of dispute settlement as one of the substantial issues arising out of the

Commission's debate, and welcomed his proposal for the drafting of model clauses for insertion in future treaties.

17. Interpretative declarations were widely - and wrongly - used in modern times. His delegation shared the view that many such declarations were in fact disguised reservations, since they excluded or modified the legal effect of certain provisions of a treaty in their application to the author State. Declarations which met the substantive criteria for reservations set forth in article 2, paragraph (d), of the Vienna Convention on the Law of Treaties must be subject to the same legal regime as reservations, although one result of such an approach might well be an increase in the number of reservations made to multilateral treaties or a decrease in the number of States becoming parties to such treaties.

18. An interpretative declaration differed from a reservation in that it had no legal effect on the other parties even if they raised no objection. If it was not accepted by the other parties, an interpretative declaration would not have any consequence on the interpretation of a treaty within the meaning of article 31 of the Vienna Convention on the Law of Treaties. To the extent that it was accepted by one or more parties to the treaty, it might qualify under article 31, paragraph 2 (b), as an instrument which was part of the context for the purpose of treaty interpretation. Thus, an interpretative declaration belonged to the legal regime of treaty interpretation.

19. He was concerned by the incompatibility between the concept of reservations and the nature of human rights treaties, which had prompted the Special Rapporteur to wonder whether the system of reservations provided for in the Vienna Convention ought to be modified or even abandoned in the case of such treaties as well as treaties on the environment and disarmament. While Jamaica might consider a special regime of reservations for human rights treaties, it did not wish to encourage a growing list of areas requiring special treatment.

20. The Human Rights Committee had recently attacked the consensual system of reservations set up by the Vienna Convention. That Committee felt that it, rather than States parties to the International Covenant on Civil and Political Rights, should determine whether a specific reservation was compatible with the Covenant. It also maintained that an unacceptable reservation was severable in that the Covenant would be operative for the reserving party without the benefit of the reservation. He wondered, however, whether the Committee was not acting ultra vires that Covenant, since no provision of that instrument authorizes it to take such action. Competence to pass judgment on the acceptability of a reservation to the Covenant was neither appropriate nor necessary for the Human Rights Committee in the performance of its functions. Nevertheless, while the Committee's approach was counter to the consensual regime set out in the Vienna Convention, it illustrated the need for mechanisms to resolve differences relating to reservations.

21. Jamaica did not oppose the settlement of reservation disputes by a third party, even a human rights monitoring body, but questioned settlement by a body which did not have that competence under the relevant treaty. As to the Human Rights Committee's proposition that an unacceptable reservation should be severed, he believed that a reservation could conceivably apply even if it had

passed all the tests for acceptance under article 20 of the Vienna Convention. His delegation favoured a special system for reservations to human rights treaties, but that system must balance respect for the consensual basis of any treaty with the fundamental imperative of a human rights treaty. While it might be difficult to settle reservation disputes exclusively on the basis of the Vienna Convention, the possibility of an initial attempt at resolution on that basis should not be excluded. Moreover, the special circumstances of human rights treaties should not divert attention from the need for a system for establishing the compatibility of a reservation with the object and purpose of treaties in general.

22. His delegation favoured a modest approach to the Commission's work on the question of reservations. The system established by the Vienna Convention had worked fairly well, and it would be better to resolve the ambiguities raised by that Convention rather than to change the entire system. The final result could take the form of a treaty such as the Vienna Convention; however, he did not object to the drafting of guidelines which could later be transformed into a treaty, and he supported the drafting of model clauses for future treaties.

23. Mr. AL-BAHARNA (Bahrain), speaking on State succession, said that the principles that every person had a right to a nationality, that no person should be deprived of his nationality, that no person should become stateless as a result of State succession, that a nationality acquired as a result of State succession was effective from the date of succession and that the nationality of a person was that of the strongest attachment were fundamental legal and humanitarian principles which ought to be reflected in the preliminary study on the topic requested by the General Assembly. He agreed with the Special Rapporteur's suggestion that the Commission should adopt a flexible approach to the topic and that the decision on the form of the final instrument should be postponed.

24. His delegation supported the general view in the Commission that the preliminary study should rely on recent State practice, and that due account should be taken of the humanitarian aspect of the question. His delegation supported the general view in the Commission that the preliminary study should rely on recent State practice, and that due account should be taken of the humanitarian aspect of the question. He agreed with the Special Rapporteur's suggestion that the definition of the term "succession of states" as embodied in the Vienna Convention on Succession of States in respect of Treaties and the Vienna Convention on Succession of States in respect of State Property, Archives and Debts should be retained and that the Commission should omit cases of unlawful succession from the study. In addition, the Commission should separate the discussion of the nationality of natural persons from that of the nationality of legal persons, dealing first with the former.

25. With regard to the rule of continuity of nationality, the resolution of issues arising between the date of succession and the date when issues of nationality were settled should be deemed to operate retroactively to the date of succession. Although nationality was essentially governed by domestic law, international law imposed certain restrictions on arbitrary actions of the State, and his delegation felt that the Commission should focus on certain negative effects of domestic law on nationality in the event of State

succession. Likewise, the Commission should give greater emphasis to the concept of a genuine link between an individual and his State of nationality.

26. With regard to human rights law, he stressed the importance of limiting the discretionary powers of States in respect of nationality and agreed that the principle of the right to a nationality was central to the Commission's work. The concept of the right of option should be strengthened and clarified but there could be no unrestricted free choice of nationality.

27. He did not agree with the Special Rapporteur's statement that the humanitarian aspect of State succession should not take precedence over other considerations. In fact, such an approach represented the only way of preventing innocent people from being victimized by changes of sovereignty. International law had only a limited role to play in State succession, but it should preclude the successor State from enacting legislation that was unfair to those affected by such changes, and it should not acquiesce in the granting of nationality to those who did not genuinely belong to the successor State. The Commission's function should be to define the limits of State action under international law with regard to the denial or granting of nationality by the successor State.

28. The effect of article 15 of the Universal Declaration of Human Rights was to restrict statelessness and to grant individuals the right to change their nationality. Those restrictions were binding on all States, including successor States, and the Commission should explore the effects of article 15 on State succession. A balance must be struck between the classical norms relating to State succession and human rights issues arising from the application of such norms.

29. With regard to the classification of the operative rules of international law in regard to succession of nationality under both customary and conventional international law, he would have preferred an approach that derived the applicable norms from the corpus of international law. The post-colonial era and recent events in Eastern Europe had yielded much relevant material which the Commission should consult.

30. With regard to the report of the Working Group on State Succession and its Impact on the Nationality of Natural and Legal Persons, he agreed with the views of the Special Rapporteur set out in paragraphs 194, 220 and 221 of the Commission's report. However, he also supported the Special Rapporteur's reservations as expressed in paragraph 221 of the report and approved of the Special Rapporteur's plan for the content of his next report on the topic.

31. Turning to the law and practice relating to reservations to treaties, he said that without the facility of reservations it was doubtful whether so many States would have become parties to the multilateral conventions adopted under United Nations auspices. Consequently, nothing should be done which would be detrimental to the existing regime of reservations to treaties, although improvements could be introduced in the law and practice of reservations to treaties. The right of States to formulate reservations was increasingly being asserted, and there seemed to be a felt need for clarification of the law governing reservations to treaties.

32. The issue of whether reservations should be examined from the point of permissibility or opposability raised questions which had been laid to rest by the Vienna Convention on the Law of Treaties. He opposed any approach that was inconsistent with the pragmatism of that Convention and felt that the questions raised by the Special Rapporteur with regard to the gaps and ambiguities in the Convention were impractical and would probably not lead to consensus within the Commission.

33. The distinction between reservations and interpretive declarations was an academic one: the Vienna Convention on the Law of Treaties provided an adequate definition of reservations, which were acceptable as long as they facilitated wider acceptance of treaties. He supported the Special Rapporteur's suggestion to change the title of the topic from "The law and practice relating to reservations to treaties" to "Reservations to treaties" as well as the modest approach to the rules set out in the Vienna Conventions of 1969, 1978 and 1986, reflected in paragraph 485 of the Commission's report.

34. The preparation of a guide to practice in respect of reservations would be a sensible undertaking. His delegation shared in the general approval of the suggestion to draft model clauses for insertion in future conventions and welcomed the Commission's authorization of the Special Rapporteur to prepare a questionnaire to elicit information from States and international organizations regarding reservations to treaties.

35. With regard to chapter VII of the report, he agreed with the proposal to give priority at the next session of the Commission to completion of the second reading of the draft Code of Crimes Against the Peace and Security of Mankind and the first reading of the draft articles on State responsibility. Work on the topic of liability should continue during that session so that the first reading of the draft articles on activities that risked causing transboundary harm could be completed by 1996. He welcomed the establishment of the Working Group on State Succession and its Impact on the Nationality of Natural and Legal Persons, and agreed that the Working Group should be reconvened to continue studying the topic at the forty-eighth session of the Commission.

36. He questioned the wisdom of specifying a five-year period for completion of the Commission's work on the law and practice relating to reservations to treaties and of what form the work on that topic would ultimately take, a decision which should be left to the General Assembly.

37. With regard to the recommendations that the General Assembly should be requested to include the topic of diplomatic protection in the Commission's programme of work and that it should conduct a feasibility study on the law of the environment, he disagreed that the request should be deferred until after the forthcoming elections to the Commission. While it might have been better if that proposal had reached the General Assembly during its forty-ninth session, the proposal should nevertheless be welcomed since it would facilitate the Commission's long-term programme.

38. Ms. WONG (New Zealand) noted that the Sixth Committee's consideration of the report of the International Law Commission had consisted almost entirely of prepared statements at the expense of genuine debate. However, the Committee's role should be to provide policy guidance, and she would welcome any suggestions from the Chairman as to how Committee members might circulate detailed written statements while engaging in a genuine, if less formal, discussion that could offer real guidance to the Commission.

39. New Zealand welcomed the proposal to seek the Commission's views on the question of reform as it approached the end of the quinquennium. The Sixth Committee would also be enriched by having the preliminary views of those members of the Commission who had a particular interest in the law of the environment, which could be conveyed in the report on the work of the forty-eighth session of the Commission. She supported the comments made by the representatives of Japan and Austria on the desirability of a feasibility study on that topic.

40. Mr. SURIE (India) said that the issue of international liability essentially pertained to the liability of States or other entities engaging in industrial and other development activities and any damage that might be caused in the process. Only entities having direct control of an operation or an activity should be held responsible for any consequent damage. He did not believe that such international liability should be directly attributed to a State merely because the activities that caused harm were undertaken in areas under its jurisdiction. The concept of control itself required careful elaboration or clarification, bearing in mind the practices of transnational and multinational corporations.

41. The liability of a State arose when a State acted as an operator in its own right or, alternatively, when it was the entity responsible for exercising due diligence in imposing certain standards of safety, regulation and monitoring. Adequate legal sanctions were necessary to ensure that such activities were also backed by insurance policies and compensation funds. Liability regimes for mass disasters should be organized separately and should have special features. The State should play a role in pursuing claims and ensuring an equitable resolution of the various issues involved.

42. The general principle that a State bore responsibility for harm done to other States for activities conducted within its territory was open to serious debate in cases where a strict chain of causation had not or could not be established. In all other cases, where individual claims were few and otherwise manageable, they should be subject to the tests of tortious liability generally applied in national legal systems. Further, in order to be effective and equitable, any international liability regime called for appropriate standards of harm against which the liability could be judged, and which would naturally vary in accordance with a country's stage of economic and societal development. In that connection, the needs, aspirations and capabilities of developing countries, must be taken into account when developing the principles of international liability, since those countries represented the large majority of the world's peoples.

43. On the subject of the law and practice relating to reservations to treaties, his delegation agreed that the Vienna Conventions should not be reopened. The Commission should not attempt to indicate separate categories of multilateral treaties in an effort to establish different standards within a universal regime of reservations to treaties. Different historical, political, economic and cultural backgrounds and judicial and legal systems were central in explaining why and in what form reservations and declarations to a treaty were formulated by States parties. The only viable approach, then, was to ensure that Vienna legal regime applied uniformly to all treaties.

44. On the subject of State succession and its impact on nationality, he said that the Commission should study the practice of States of all regions on the issue of change or conferment of nationality at the time of State succession. The primary focus should be on avoidance of statelessness. He looked forward to consideration of that issue in the context of legal persons, such as corporate bodies.

45. He agreed with the representative of Brazil that a decision on the topics of diplomatic protection and the rights and duties of States in the field of environment could be postponed until the constitution of the next Commission in 1996.

46. Mr. VILLAGRAN-KRAMER (Guatemala), referring to the conclusions of the International Law Commission's report on the subject of nationality and succession of States, said that his delegation did not consider that a full range of freedoms existed with regard to nationality in cases of State succession. Rather, binding links existed between persons and Sates which were determined by either jus soli or jus sanquinis.

47. The report stated that in the event of division and succession of States, not only did the right to nationality exist, but institutional mechanisms should be in place to enable people to exercise their right to choose their nationality. The right to nationality had obviously entered the sphere of human rights, and he was gratified that many delegations agreed that the Commission should emphasize that aspect of the question.

48. New trends were emerging in that sphere which should be examined by the Commission, such as the question of successive nationalities enshrined in treaties between Spain and certain Latin American countries, under which nationality was granted reciprocally when a national of one State party took up residence in the other party. Some European countries - Italy and Germany for instance - had introduced interesting regulations to govern the relinquishing of a nationality upon naturalization in another State. Thus, the Commission's preliminary study on that important topic would be useful in deciding whether a convention or a declaration on the question would be more appropriate.

49. Taking up the topic of reservations to treaties, he said that Guatemala viewed the Special Rapporteur's proposals on that subject with great optimism. In his delegation's view, a reservation to a treaty was an act of sovereignty and consequently could be regulated only with the agreement of the State formulating the reservation. It could therefore be stipulated in an international treaty that no reservations would be accepted, as in the United

Nations Convention on the Law of the Sea, or alternative agreements could be established to deal with reservations, as in the case of the International Labour Conventions. His delegation believed that the regime set out in the Vienna Convention on the Law of Treaties, was satisfactory and should not be amended. The Commission might issue directives to fill existing lacunae, as the Special Rapporteur had suggested, but it should not elaborate a draft convention since such an instrument would certainly not achieve its desired ends.

50. Similarly, he did not think that a general regime could be formulated to apply to human rights treaties: the jus cogens nature of certain fundamental human rights meant that they could not be reduced or minimized through treaties; moreover, reservations to human rights treaties had proved effective in Latin America and in Africa, creating a much broader normative spectrum and thereby facilitating signature and ratification of those treaties. The Commission could, however, use the method of model clauses to suggest a specific regime for human rights treaties.

51. Some of the topics adopted for consideration by the Commission were not entirely acceptable to the developing countries since they reflected the interests of the developed countries. The environment was a particularly appropriate topic of study, but his delegation had no interest whatsoever in the subject of the diplomatic protection, considering it to be merely an extension of the old concept of liability deriving from harm to foreigners, which had caused major problems in Latin America throughout the nineteenth century.

52. Mr. CEDEÑO (Venezuela) suggested that the International Law Commission's consideration of reservations to treaties should be limited to reservations formulated by States to multilateral treaties, since considering reservations to bilateral agreements would be equivalent to renegotiating those instruments. Predictably, the Commission's discussion of the topic had produced more questions than answers. The regime that had evolved during the years leading up to the adoption of the Vienna Convention on the Law of Treaties in 1969 permitted broader, balanced participation of States in multilateral agreements and accommodated reservations which States considered to be a prerequisite for their participation in those instruments. He wished to emphasize in that connection that no State could be bound without its consent, nor could any reservation be opposed without its consent.

53. Although the Vienna Conventions had certain shortcomings, it was important not to jeopardize international legal stability by formulating new provisions. Most members of the Commission had agreed that there was no need to reopen the debate on those texts, although certain ambiguities required clarification. The Commission should concentrate on the five topics highlighted by the Special Rapporteur in his summary of the debate.

54. With regard to the final form of the Commission's work, a number of possibilities had been suggested: a convention that would reproduce the relevant provisions of the three Vienna Conventions with appropriate modifications; a draft protocol; a guide on the practice of States and international organizations; and model clauses from which inspiration could be drawn when negotiating a treaty. However, the decision as to the form should be deferred so as not to limit the Commission's freedom to explore the topic. For

the time being, the Commission should focus on elaborating a set of draft articles with commentaries, with special emphasis on State practice.

55. The question had also been raised as to whether a single set of rules should be established or whether there was a need for separate systems covering the human rights treaties. The entire matter of separate regimes for different types of instruments should be considered with great care and in the light of new realities. Human rights were fundamental, universal and inalienable and served to protect the individual. Consequently, the instruments relating to them could not be subject to reservations. Nevertheless, his delegation was not entirely convinced of the value of establishing separate regimes for human rights treaties.

56. It was difficult to distinguish between an interpretative declaration and a formal reservation unless such a distinction had been established in the relevant convention, as was the case with the United Nations Convention on the Law of the Sea, under which States might make a declaration for the purpose of harmonizing their internal law with the provisions of the Convention. The Commission needed to make a careful study of the validity and effect of interpretative declarations, international practice with regard to reservations, and international jurisprudence in that area.

57. The practice of making interpretative declarations, considered by some to be hidden reservations, should be more closely linked to States' internal legislation rather than to their desire to establish a treaty relationship with other signatories on the basis of such declarations.

58. Mr. KOURULA (Finland), speaking on behalf of the Nordic countries, said that the Nordic countries shared the views expressed by the representative of Austria with regard to the need to reconsider existing procedures for the codification and progressive development of international law and to strengthen the dialogue between the International Law Commission and the States Members of the United Nations. The Commission should continue to review its methods of work and report its conclusions to the General Assembly in order to create the conditions for a more profound dialogue. It was in the common interest of the Commission and the Sixth Committee to maintain and enhance the relevance of the legal work done within the United Nations.

59. With regard to the topic of the law and practice relating to reservations to treaties, the Nordic countries endorsed the direction in which the Commission was heading. As to the Commission's long-term programme of work, they shared the doubts already expressed regarding the advisability of including a new topic on the agenda or starting a feasibility study in the last year of the Commission as currently constituted.

60. Turning to the topic of State succession and its impact on the nationality of natural and legal persons, he noted that while it had only provided preliminary observations, the Commission had addressed some important questions and members had agreed on certain basic choices.

61. The topic derived from three different branches of international law (the law of nationality, the law of State succession and human rights law), none of

which embraced a clear set of rules. International law provided only a small number of clear and generally binding rules on nationality, which took the form of decisions of international arbitral tribunals and the decision of the International Court of Justice in the Nottebohm case. One classic requirement for granting nationality to natural persons was that they must be genuinely linked to the State in question. State succession was a notoriously fragmented and controversial field of law. Recent trends emphasized the need for practical arrangements rather than abstract principles so as to ensure the stability of legal relations in cases of a change of sovereignty.

62. The most promising approach to the issue of State succession appeared to be basing it on the norms of international human rights law. The Nordic countries thus welcomed the Commission's decision to focus on the limitation on the freedom of action of States posed, inter alia, by their human rights obligations. Humanitarian considerations were in fact more central to questions of nationality than to the issues covered by the two Vienna Conventions on the succession of States, which dealt with other consequences of succession.

63. Although not in force, the two Vienna Conventions had often been referred to in recent cases of State succession. The Commission was therefore justified in choosing to use the definition of succession of States provided therein. The use of the categories of succession included in the 1983 Vienna Convention was equally justified. The concepts of separation of a part of a State and of dissolution of a State were helpful in making practical distinctions between different cases of State succession. Nevertheless, there had been cases where problems with respect to the withdrawal or granting of nationality because of territorial changes had arisen which did not fit into any of those categories. The Commission had had good reason to omit cases of continuity from the scope of the topic because continuity implied absence of succession. Nevertheless, it was important to bear in mind the particularly complex nature of some situations involving a change of sovereignty.

64. State succession did not result in an automatic change of nationality. It was a prerogative of the States concerned to establish their nationality laws. That must, however, be done in accordance with existing human rights standards and other international legal standards which limited the exercise of a State's sovereign powers in the area of granting of nationality. The Nordic countries were pleased to see that the Commission had not only recognized an emerging right to nationality but had also considered placing a concomitant obligation on States to consult and negotiate with each other in order to avoid cases of statelessness. With further elaboration, that might be the most important outcome of the project.

65. Two other questions considered by the Commission merited further attention. The first related to the consequences of non-compliance by States with the principles applicable to the withdrawal or granting of nationality. Although hypothetical, the alternatives proposed in the report of the Working Group on State Succession and its Impact on the Nationality of Natural and Legal Persons were thought-provoking. The second question concerned the issue of protecting the rights of the individual during the transition period, which could be quite long, before successor States adopted their nationality laws.

66. The Commission had decided to give priority to consideration of the effects of State succession on the nationality of natural persons over that of legal persons, in view of the urgency of the former. The Nordic States endorsed that approach: withdrawal or imposition of nationality against a person's will affected the exercise of fundamental civil and political rights and, to a certain extent, economic and social rights; for a legal person, the consequences were mainly economic or administrative. Rules concerning the nationality of legal persons might be more common in State practice and customary law, thus lending themselves more easily to systematization. The Commission's next report, covering both areas, would be welcome.

67. As to the final form the Commission's work on the topic should take, the Special Rapporteur had expressed a clear preference for forms other than a convention: the small number of ratifications of the two Vienna Conventions on succession of States demonstrated the complexity and controversial nature of the subject and led to the conclusion that a comprehensive declaration might not be the best solution. The Nordic countries shared the view that a declaration, a set of guidelines, or perhaps a more ambitious instrument covering a specific issue might be useful in promoting the progressive development of international law in that field.

68. Mr. STEPANOV (Ukraine) said that as a successor State to the former Soviet Union, his country welcomed the Commission's work on the complicated topic of State succession and its impact on the nationality of natural and legal persons. The final decade of the twentieth century had been marked by the emergence of more than 20 newly independent States, which had given rise to legally complicated and unique situations.

69. As a general rule, replacement of sovereignty with respect to territory led to replacement of the nationality of persons living on that territory. In any event, following the disappearance of a State, the nationality associated with it ceased to exist. One question which arose in that connection was whether the successor State should grant nationality to persons residing in the transitional territory. International practice had been based on the assumption that successor States could not ignore the fact that individuals permanently residing in transitional territory had a connection with that territory. Under international customary law, successor States were bound to grant citizenship to all individuals permanently residing in the transitional territory, except those possessing the nationality of a third State.

70. According to the law on succession adopted by his Government in 1991, all citizens of the former Soviet Union who, at the time of the declaration of independence of Ukraine, were permanently residing in its territory were granted Ukrainian citizenship. Under his country's citizenship law, Ukrainian nationals were defined as individuals residing in Ukraine at the time of entry into force of the law, provided such individuals did not have foreign citizenship and had no objection to acquiring Ukrainian citizenship. No time period for refusal of Ukrainian nationality was specified under the law.

71. Proposed modification of the citizenship law, which would eliminate the possibility of refusing Ukrainian citizenship, was currently under review. Such a revision would help avoid the phenomenon of statelessness and would

demonstrate that Ukraine was adhering strictly to international standards in that area.

72. Ukraine was firmly opposed to the deliberate use by a State of the institution of succession to expand its jurisdiction over the territory of other States. Of particular concern were cases where a successor State adopted a citizenship law which provided an artificial extension of its citizenship to citizens of other newly independent States. Such an option of dual citizenship might be used by one successor State for partial or complete absorption of the population of another independent State, which could be detrimental to the independence and sovereignty of newly independent States.

73. Mr. CECE LOUA (Guinea) said that his delegation appreciated the efforts of the International Law Commission to elaborate universally acceptable norms in an area as complex as that of State succession and its impact on the nationality of natural and legal persons. The profound political changes of recent years, in particular the appearance of new subjects of international law following State successions, only highlighted the timeliness and difficulty of the topic. It was therefore understandable that the matter remained at the theoretical level.

74. His delegation welcomed the reference in the Special Rapporteur's report on the topic to the work of international bodies that had concerned themselves with the problem of nationality in relation to recent territorial changes. It also endorsed the commentary to the Commission's report in which it was explained that the term "succession of States" was used to refer exclusively to the fact of the replacement of one State by another in the responsibility for the international relations of the territory, leaving aside any connotation of inheritance of rights or obligations on the occurrence of that event, so that the word "responsibility" did not convey any notion of "State responsibility".

75. By emphasizing the criteria of attachment and a genuine link between the State and the individual, the Judgment of the International Court of Justice in the Nottebohm case provided the definitive foundation for the concept of nationality. Under international law, various legal systems applied the criteria of jus sanquinis and jus soli either individually or in combination in the determination of nationality. The objective in all cases was to avoid statelessness which was, in itself, a violation of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

76. The granting of nationality fell, a priori, within the scope of domestic law. International law served to limit the effects of the granting of nationality with regard to other States. Under most internal legislation, individuals had the right to decide at a certain age whether they would become nationals of a particular State. The attribution of nationality on the basis of jus soli had helped to reduce statelessness.

77. While agreeing with the Special Rapporteur's approach to the question of categories of succession, his delegation was concerned about the creation of nation-States out of a combination of de facto and legal citizenship. In his view, the right of option and referendum should also be available.

78. Determination of the nationality of legal persons gave rise to fewer problems and depended on the type of legal person involved.

79. Further work by the Commission on the subject of dual nationality would be of great benefit to States. Nationality laws in most of the States that had been created as a result of decolonization were dominated by the legislation of the former colonial Power. Yet, in reality, the same population might be distributed throughout many States and be claiming citizenship rights. The objective was not to endorse dual nationality but to formulate rules which would help States improve their own legislation, avoid potential conflicts and reduce or eliminate statelessness.

80. As to the final form the Commission's work on the topic should take, the Special Rapporteur had said that if the Commission wished to lay down certain general principles for submission to States, a declaration would be the appropriate instrument. Declarations had been part of United Nations practice for decades and were one of the best ways of expressing the political will of States. Nevertheless, their legal value was far less than that of conventions, treaties or agreements. His own delegation would prefer a convention as the final form.

81. Mr. DE SARAM (Sri Lanka) said that he agreed with the general approach the Commission intended to take to the topic of State succession and its impact on the nationality of natural and legal persons. He shared the view of other members of the Sixth Committee that the provisions of the 1969 Vienna Convention on the Law of Treaties, repeated in two later treaty instruments, should be maintained. He also agreed that guidelines and, where necessary, model clauses were preferable and realistic choices.

82. In his view, it would be inadvisable to develop special regimes on reservations for different categories of instruments.

83. In approaching the topic of reservations to treaties, the Commission should bear in mind the many important theoretical points which had been made in numerous scholarly studies on the three Vienna Conventions. At the same time, current realities had to be taken into consideration.

84. The proposed questionnaire to be sent to States and to the principal depositaries of multilateral treaties would be of great practical value to the Commission's work. It would provide the Commission with detailed information on State practice and on how various depositaries, within and outside the United Nations system, handled reservations and resolved the inconsistencies that could arise when States deposited unilateral statements.

85. It would be unrealistic to expect Governments not to protect their interests by making reservations, even after a treaty was adopted. It was also reasonable to assume that any Government, in becoming party to a treaty, would not wish to disengage itself capriciously from the object and purpose of that treaty. Thus, it was difficult to believe that States made reservations in bad faith. In practice, States that made non-permissible reservations might well be under the misapprehension that their reservations were permissible.

86. Finally, from the standpoint of preserving the integrity of a treaty, the underlying objectives of a treaty were just as important as the unilateral statements deposited at the time of its signature, ratification or accession.

87. The issue of State succession and its impact on the nationality of natural persons was a particularly complex matter. To alleviate or eliminate difficulties relating to State succession by way of public international law was indeed a worthy cause. The issue of statelessness should be viewed in the light of the concept in public international law that it was for a State to determine who should be accorded its nationality, subject to international obligations, including international humanitarian obligations. Since each situation of State succession had its own factual, legal, emotional and political context, solutions based solely on the enunciation of legal obligations were insufficient to prevent the tragedy of statelessness. It was difficult to legislate in the abstract without important information regarding the practical experience of States in resolving such matters.

88. The scope and purpose of the topic dealing with the rights and duties of States with respect to the environment had yet to be clarified in the light of all that had transpired in the numerous global, regional, subregional and bilateral specialized forums on environmental issues. Although several treaties in that area had entered into force, many fundamental issues of international law as it related to the environment also required clarification. It was one thing to exhort countries to save the environment in General Assembly resolutions but quite another matter to do so by formulating rules that were intended as legal obligations.

89. Mr. Chung Il CHEE (Republic of Korea), referring to the deletion of article 16, which dealt with the crime of the threat of aggression, from the draft Code of Crimes against the Peace and Security of Mankind, said that Article 39 of the Charter of the United Nations referred specifically to "any threat to the peace, breach of the peace, or act of aggression", thereby establishing a rule for intervention by the Security Council. Therefore, if any threat to the peace could be the object of action by the Security Council under the Charter, the threat of aggression, too, could be the object of action by the Council. A threat of aggression could certainly be regarded as worthy of the international community's concern. Events in recent years had shown that planning and preparing for military action eventually led to acts of aggression. Advanced technology made it relatively easy to detect one State's preparations for military action against another State. For that reason, the Commission should reconsider retaining article 16 in the draft Code.

90. On the subject of State succession and its impact on the nationality of natural and legal persons, he said that an individual's right to nationality should be protected as a human right. To deprive an individual of nationality was a serious matter which caused numerous hardships for that person. It was time to take action at the international level on the question of nationality, which had previously been the exclusive domain of States. If nationality was treated as a human right, it followed naturally that the recognition of an individual's right to choose his nationality was consistent with contemporary international law. The right of option in respect of nationality had been evidenced in States practice since the Second World War and incorporated in

international legal instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and his delegation endorsed the Commission's work on that right.

91. In chapter V of the report, the wording of article D of the draft articles on international liability for injurious consequences arising out of acts not prohibited by international law did not adequately impose an obligation on States to prevent or minimize transboundary harm. Stronger wording should be added to impose an obligation to prescribe an agreement to take preventive measures.

92. On the question of State responsibility (chapter IV), he said that while it was appropriate to refer to a peremptory norm of general international law in article 14, paragraph (e), of the draft articles, that norm had not been sufficiently crystallized by State practice, nor had there been agreement as to what activities contravened it. That subject required careful consideration.

93. With regard to the law and practice relating to reservations to treaties, his delegation endorsed the views held by the Special Rapporteur as well as his arguments for drafting model clauses and guidelines for the regime of reservations. It was necessary to draw a distinction between interpretive declarations and reservations to treaties, since State practice had often blurred the distinction between the two by deliberately using interpretive declaration as reservations. The time had come to define the nature, limits and legal effect of both concepts clearly so that they could play a useful role as normative rules of general international law. Lastly, his delegation endorsed the conclusions of the Special Rapporteur on the Commission's approach to the rules of reservation, which would be to determine any new rules that might be necessary to complement the 1969, 1978 and 1986 rules without throwing out the old rules, which were certainly not obsolete.

94. Mr. REZAEIAN (Islamic Republic of Iran), speaking in exercise of the right of reply, referred to the remarks made by the representative of Austria concerning the law and practice relating to reservations to treaties and said that objections by States to reservations made by other States were normally addressed through the depositary of the treaty in question. Furthermore, it was not the practice of the Sixth Committee to use its forum to make remarks having political connotations. Dozens of States had signed or ratified the Convention on the Rights of the Child with reservations, including several Islamic countries which had made reservations or declarations similar to those made by his country.

95. Mr. HAFNER (Austria), speaking in exercise of the right of reply, said that it had not been the intention of his delegation to make a political statement, but rather to illustrate one way in which the question of impermissible reservations and the reaction to those reservations could be resolved without creating difficulties in the relations between two States. In fact, his delegation had tried to demonstrate a positive solution to a problem which had not been resolved by the 1969 Vienna Convention on the Law of Treaties.

The meeting rose at 6.05 p.m.